**HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI**

**WRITPETITION No.3028 OF 2000**

Between:

J. Vasanth Rao & others

... Petitioners

And

The Managing Director,
A.P. Transco, Hyderabad & another

... Respondents

::O R D E R::

Counsel for the petitioners : Shri Dhonday Ram Mane

Counsel for the respondents : Shri Samineni Kishore

**07.03.2007**

In this petition, the petitioners have prayed for issue of a mandamus to the respondents to regularize their services in terms of the policy contained in B.P.Ms.No.36 dated 18-5-1997 and the law laid down by the Supreme Court in **Secretary, Haryana State Electricity Board v. Suresh Kumar**[1].

At the hearing, Shri Dhonday Ram Mane, learned counsel for the petitioners stated that three of his clients i.e. petitioner Nos. 2 to 4 may be granted leave to withdraw from this petition with liberty to avail remedy by filing applications under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (for short 'the 1970 Act').

Shri Samineni Kishore, learned counsel for the respondents says that he does not have any objection.

In view of the above, the writ petition is dismissed qua petitioner Nos. 2 to 4 with liberty to them to avail appropriate remedy under the 1970 Act.

The issue, which remains to be considered, is whether petitioner No.1 – J. Vasanth Rao is entitled to be considered for appointment as Lower Division Clerk/Typist in accordance with the provisions contained in B.P.Ms.No.36, dated 18-5-1997.

The grievance of the petitioner is that even though he possesses the qualifications and fulfils the conditions of eligibility prescribed for appointment as Lower Division Clerk/Typist, the respondents have not considered his case for regular appointment in accordance with the policy contained in B.P.Ms.No.36, dated 18-5-1997.

Shri Dhonday Ram Mane argued that non-consideration of the case of petitioner No.1 for appointment in the services of the Board (now A.P. Transco) has resulted in violation of his fundamental right to equality guaranteed under Articles 14 and 16 of the Constitution. He submitted that petitioner No.1 falls in the category of contract labour and, therefore, he is entitled to be considered for appointment as Lower Division Clerk/Typist as of right. To substantiate this, learned counsel strongly relied on the certificates issued by the officers of the Board and contractor, which have been countersigned by different officers of erstwhile Andhra Pradesh State Electricity Board.

Shri Samineni Kishore, learned counsel for the respondents half-heartedly argued that the certificates produced by petitioner No.1 cannot be made basis for treating him eligible to be considered for regular appointment as Lower Division Clerk/Typist because the documents produced by him do not show that the contractor was engaged by the Board for execution of works.

I have considered the respective submissions. B.P.Ms.No.36 dated 18-5-1997 and B.P.Ms.No.271, dated 31-12-1997, which have bearing on the decision of the writ petition, read as under:

ANDHRA PRADESH STATE ELECTRICITY BOARD:
VIDYUT SOUDHA ::: HYDERABAD

Estt. – APSE BOARD – filling up of 50% existing vacancies in initial recruitment cadres by Ex-casual labour who obtained court orders and Village Electricity Workers – ORDERS – Issued.

B.P. (P & G. Per) Ms.No.36, Dated: 18-5-1997

Read the following :-

1. Minutes of Joint Meeting dated 5-3-96 with the three Recognised Unions.

2. B.P. (P & G. Per) Ms.No.228, dt.27-1-97
3. B.P. (P & G. Per) Ms.No.17, dt.22-4-97
4. Gvoernment's D.O. Lr.No.21207/Ser.A.2193 E. Deptt., dated 18-5-1997

PROCEEDINGS:

In the Joint Meeting held on 5-3-96 with the three recognized unions, it was agreed, inter alia, to fill up 50% of the vacancies of the following initial recruitment cadres on receipt of permission from Government, by considering the cases of Ex-casual labour covered by court cases who have to be given second chance, contract labour and Village Electricity Workers.

JLM/JPA/JA/LDC/RC/Typist/Sub-Engineers

2. In the reference second cited, certain guidelines have been issued to consider these cases for appointment against 50% vacancies in the above mentioned categories.

3. The A.P.S.E. Board has re-examined the issue in the light of the orders issued by the Government in the reference last cited and also the developments that took place with reference to the abolition of 33 categories of contract labour in Generating Stations in G.O.Ms.No.41, Labour Department, dt.23-9-96 and decided to consider the cases of Ex-casual labour covered by court cases who have to be given second chance, Village Electricity Workers and Contract Labour not covered by 33 abolished categories in Generating Stations, against 50% of existing vacancies in the above initial recruitment cadres.

4. The A.P.S.E. Board accordingly issues the following orders in supersession of the orders issued in the references 2 and 3rd cited.

i) Ex-Casual Labour:

The Ex-Casual labour who were already interviewed but failed in the test and given second chance and also obtained interim orders from the High Court for consideration are only eligible for selection for appointment against 50% of the existing vacancies in accordance with the guidelines contained in Memo No.DP/DM-I./A3/1138/95-1, dt.26.9.1985 read with Memo No.D/DM-I/C2/2519/93 dt.14.9.93.

ii) Village Electricity Workers:

In terms of the agreement dated 5.3.96, the cases of the village Electricity Workers shall be considered for selection and appointment against 50% of the existing vacancies subject to the condition that they are not eligible to derive any benefit for their earlier services and on selection they will be appointed as fresh candidates in A.P.S.E. Board.

iii) Contract Labour:

The Contract labour other than those engaged in 33 abolished castegories in generating stations shall be considered for selection and appointment against 50% existing vacancies.

5. The guidelines for selection of the candidates from the above categories shall be as follows:

a) Age: Age shall be reckoned as per Board's service regulations in force at the time of their first engagement. There shall be no relaxation of age.

b) Educational Qualifications: Educational Qualifications shall be as per Board's service regulations in force at the time of their first engagement. There shall be no relaxation of educational qualifications or other relevant technical qualifications with are prescribed in the service regulations for such appointment.

c) Seniority: The Seniority shall be reckoned based on the total period of service rendered by the respective candidates in the Unit as per muster rolls/wage register or as per the records maintained under the contract labour (Regulation and Abolition) Act, 1970. Separate seniority list shall be prepared for each category as per their eligibility. The continuous period of working shall be taken for purpose of reckoning in seniority in respect of village Electricity workers.

d) Rules of Reservation: The rule of reservation as per roster in terms of Reg.22 of A.P.S.E.B. Service Regulation Part-II shall be strictly followed.

e) Selection Committee:

i. Director personnel.
ii. Concerned Chief Engineer from Generating Station/Zone
iii. Deputy Secretary (Personnel)
iv. Director (Industrial Relations) –Member Convenor.

6. The Selection Committee constituted above shall select the candidates suitable for appointment for each category and communicate the lists to the concerned appointing authorities. They shall appoint the selected

candidates depending upon vacancies available duly adopting the rule of reservations in terms of Reg.22 of A.P.S.E. Board Service Regulations Part-II."

The conditions laid down in B.P.Ms.No.36, dated 18-5-1997 were reiterated in B.P. (P & G. Per) Ms.No.271, dated 31-12-1997, which is also reproduced below:

**ANDHRA PRADESH STATE ELECTRICITY BOARD**

**ABSTRACT**

Establishment – Andhra Pradesh State Electricity Board – Filling up of 50% of the existing vacancies (as on 18-5-1997) by Ex.Casual Labour/Village Electricity Workers/Contract Labour – Working instructions – Issued.

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B.P. (P & G. Per) Ms.No.271, Dated: 31-12-1997

Read the following :-

1) B.P. (P & G. Per) Ms.No.36, Dt. 18-5-97.
2) B.P. (P & G. Per) Ms.No.95, Dt.17-7-97.
3) Bd's Memo No.DIR/DM (IR)/PO-II/A3/131/96, Dt.21-8-97
4) Bd's Memo No.DP/DIR/DM IR)/PO-II/131/96, Dt.28-8-97
5) Bd's Memo No.DP/DIR/DM(IR)/PO-II/131/96, Dt.13-9-97.
6) B.P. (P & G. Per) Ms.No.261, Dt. 19-12-1997.

…

**PROCEEDINGS :**

An agreement was reached on 5-3-96 between the Andhra Pradesh State Electricity Board and the recognised Unions namely A.P.E.E. Union (Regd.No.1104), A.P.S.E.B. Employees Union (Regd.No.327) and Telugunadu Vidyut Karmika Sangam (Regd. No.B-1245) wherein inter alia it has been agreed to fill up 50% vacancies in initial recruitment cadres by Ex-Casual Labour who obtained Court Orders, Village Electricity Workers and Contract Labour working in other than (33) abolished categories. Mention of this demand was also made in the agreement dated 18-5-97 with the above Unions.

2) In the B.P. first cited, orders were issued for filling up of 50% existing vacancies in initial recruitment cadres by Ex-Casual Labour who obtained Court Orders, Village Electricity Workers and Contract Labour engaged in other than (33) abolished categories of Generating Stations.

3) Interviews have been conducted in Zones/Circles/ Generating Stations for filling up of the 50% existing vacancies as on 18-5-97 of initial recruitment cadres i.e. Jr.Lineman/Jr.Plant Attendant / Jr.Assistant / LDC/ Typist/ Revenue Cashier / Sub-Engineer by the Selection Committee constituted in the B.P. cited and subsequent amendments thereon.

4) In the B.P. 6$^{th}$ cited, orders have been issued that the Andhra Pradesh State Electricity Board has decided to fill up 50% vacancies in initial recruitment cadre existing as on 18-5-97 by the Ex-Casual Labours/Village Electricity Workers/Contract Labours engaged in other than 33 categories found suitable and selected by the Selection Committees constituted by the Board and it has been further mentioned that necessary working instructions to the competent authority will be issued separately.

5) The Andhra Pradesh State Electricity Board after careful consideration, issues the following working instructions for filling up of 50% vacancies existing as on 18-5-97 in the initial recruitment cadre i.e. Jr.Lineman/Junior Plant Attendant/Junior Assistant/ L.D.C./Revenue Cashier/Typist/Sub-Engineer for which interviews have been conducted with the eligible / suitable candidates form among the Ex.Casual Labour who obtained Court Orders, Village Electricity Workers and Contract Labour not engaged in (33) abolished categories.

i) **Eligibility** :-

a) Ex.Casual Labour: The Ex.Casual Labour who obtained Court Orders on any ground and who satisfy the conditions stipulated in Bd's Memo No.OSD(P)/DM-I/A3/1138/85-1, Dt.26-8-85 in respect of Operation Circles and Bd's Memo No.DP/DM-I/A(b)2/1162/88-1, Dated 4-10-88 in respect of T.L.C. Circles and Bd's Memo No.DP/DM-I/A(b)2/1163/88-1, Dt.5-10-88 in respect of Projects are eligible for consideration.

b) Village Electricity Workers: Those who are working as on 18-5-97 as Village Electricity Workers are only eligible for consideration.

c) Contract Labour: The Contracdt Labour engaged by a Contractor having a valid license issued by a competent authority under the Contract Labour (Regulation & Abolition) Act, 1970 and Regulations made therein and working as on 18-5-97 are only eligible for consideration. The clarification issued in Bd's Circular Memo No.DP/DIR/DM (IR)/POII/131/96, dt.28-8-97 and Memo No.DP/DIR/DM (IR)/PO-II/131/96, Dt.13-9-97 should also be kept in view.

ii) **Unit of Operation**: The candidates of the above categories have to be considered in the respective circles / Generating Stations against 50% vacancies existing as on 18-5-1997.

iii) **Age**: Age shall be reckoned as per the Service Regulations in force as on the date of first engagement.

There shall be no relaxation of the age.

There are specific directions from the Court to consider the cases of over aged/under aged, such directions may be honoured subject to other eligible criteria and after exhausting any remedy by appeal duly indicating a clause in the appointment order.

iv) **Educational Qualifications**: Educational qualifications shall be as per the Service Regulations in force as on the date of first engagement. There shall be no relaxation of Educational Qualifications or other relevant technical qualifications which are prescribed in the Service Regulations. The Clarification issued in Board's Memo No.DP/DIR/DM (IR)/PO.II/131/96, dated 13-09-1997 may be adhered to. If there are specific directions by the Court to consider the cases without insisting on the prescribed qualification, such directions may be honoured subject to other eligible criteria and after exhausting any remedy by appeal duly indicating a clause in the appointment order.

v ) **Seniority**: The seniority shall be reckoned based on the total period of service rendered by the respective candidates in the unit in respect of Ex-Casual Labour and Village Electricity Workers and as per muster rolls/wage registers or as per the records maintained under the Contract Labour (Regulations & Abolition) Act, 1970 in respect of Contract Labour. Separate Seniority list shall be in respect of Contract Labour. Separate seniority list shall be prepared for each category as per their eligibility. The clarification issued in the Board's Memo No.DP/DIR/DM (IR)/PO.II/131/96, dt: 13-09-1997 may be adhered to.

vi) **Rules of Reservation**: The Rule of Reservation as per roster in terms of Regulation 22 of Andhra Pradesh State Electricity Board Service Regulations Part.II shall be strictly followed.

vii) **Order of Preference**: (Subject to Eligibility).

a) Ex-Casual Labour who obtained Court order and interviewed.
b) Village Electricity Workers
c) Contract Labour

6) If any Court directions are received after the interviews are conducted to consider the cases of Ex-Casual Labours, Village Electricity Workers and Contract Labour, interviews may be conducted to such cases once in 3 months commencing from January-1998, for consideration against the existing vacancies/ future vacancies as the case may be.

7) In cases where the writ petitioners are not found eligible for selection, speaking orders may be issued indicating the reasons of their ineligibility. Copy of such orders may invariably be marked to standing legal adviser and to the counsels for petitioners.

8) The Chief Engineers are also informed that they should keep in mind the Court directions if any while issuing appointment orders.

9) The Chief Engineers are further requested to follow all other rules and regulations of the Board relating to appointment which are in vogue.

10) All the required formalities may be completed and further orders from Andhra Pradesh State Electricity Board awaited for releasing appointment orders.

**(BY ORDER AND IN THE NAME OF A.P. STATE ELECTRICITY BOARD)**

**A.K. KUTTY**

**MEMBER SECRETARY**"

A reading of the policy decisions of the Board makes it clear that ex-casual labour, village electricity workers and contract labour, who fulfilled the conditions of eligibility are entitled to be considered for regular appointment against 50% of the vacancies existing as on 18-5-1997 in the cadre of Junior Lineman/Junior Plant Attendant/Junior Assistant/Lower Division Clerk/Revenue Cashier/Typist/Sub-Engineer.

Petitioner No.1 possesses the academic qualification of graduation. Therefore, he is eligible to be considered for appointment as Lower Division Clerk/Typist. His status as a contract labour is proved from the service certificates Exs.P.4 to P.7 filed along with WPMP No.2286 of 2007, which was allowed by the Court on 14-2-2007. Ex.P.4 is the service certificate issued by Assistant Divisional Engineer, Operation, APSEB, Kurnool. The same shows that petitioner No.1 had worked as Typist in the office of the Assistant Divisional Engineer from September 1989 to

31-12-1992. Ex.P.5 shows that petitioner No.1 had worked as Typist in Operation Sub-Division, Kurnool during the strike period for two days i.e. on 18-8-1997 and 19-8-1997. Exs.P.6 and P.7 are the certificates issued by the contractor with whom petitioner No.1 had worked for execution of L.T. and 11 KV Lines and Distribution Transformer works. These certificates, which have been countersigned by the officers of the Board, unmistakably show that petitioner No.1 had worked with the officers of the Board or under the contractor in connection with the

execution of work of the Board. Exs.P.6 and P7 also reveal that as on the date of issue of B.P.Ms.No.36, petitioner No.1 was working under the contractor in relation to execution of the project of the Board. It is not the case of the respondents that the signatures of the officers of the Board are forged. Therefore, I do not see any reason to accept the spacious argument of Shri Samineni Kishore that the certificates should be discarded because credentials of the contractor are not known. In my considered view, the burden to establish that the certificates produced by petitioner No.1 are not genuine was on the respondents which they have failed to discharge.

On the basis of the above analysis of the facts and record, I hold that the petitioner is eligible for being considered for regular appointment on the post of Lower Division Clerk/Typist and non-consideration of his case has resulted in violation of his right to equality guaranteed under Articles 14 and 16 of the Constitution of India.

In the result, the writ petition is allowed qua petitioner No.1 and the respondents are directed to consider his case for regular appointment as Lower Division Clerk/Typist in accordance with B.P.Ms.No.36 dated 18.05.1997 and pass appropriate order within a period of two months from the date of receipt of copy of this order. The competent authority shall interview the petitioner and decide his suitability for the post of Lower Division Clerk/Typist. The result of the selection shall be communicated to the petitioner at the end of two months period by registered post.

**G.S. SINGHVI, CJ**

07-3-2007
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[1] 1999(1) LLJ 1086